IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1564 of 1979

to

FIRST APPEAL No 1580 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BIJUBEN DEVJI WD/O DEVJI UMRA

Versus

SPL LAND ACQ. OFFICER

Appearance: (In all Appeals)

MR DN PANDYA for appellants

MR CC BHALJA, AGP for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/09/98

ORAL JUDGMENT

#. As this group of Appeals pertains to the land acquisition compensation cases arising from one and the

same land acquisition and from the common judgment and award of the Assistant Judge, Bharuch, decided on 17.4.79, the same are being taken up together and are being disposed of by this common order.

#. The lands of the claimants-respondents are situated in village Kup, Taluka Valia, in District Bharuch. These lands were acquired by the State of Gujarat for public purpose, i.e. for construction of Beldeva Irrigation Scheme. These acquired lands were to be submerged. The Land Acquisition Officer, under his award fixed the market price of the lands which are subject matter of these Appeals at Rs.25/= per Are. Out of these lands some of the lands were of new tenure lands and therefore 1/3 rd of the amount of market price awarded by the Land Acquisition Officer was ordered to be deducted and to be paid to the Government by the claimants-respondents. The claimants-respondents being dissatisfied with this award, prayed for reference and accordingly this Reference was made to Civil Court which came to be decided under the impugned award. The claimants-appellants prayed for compensation for acquisition of their lands at the rate of Rs.125/= per are. This claim of the claimants-respondents was not accepted by the Reference Court. However, the award, so far as deduction of 1/3rd amount of compensation as ordered by the Land Acquisition Officer to be deposited in the Government, has been modified and 5% of the amount of compensation was ordered to be deducted and to be paid to the Government.

#. The learned counsel for the appellants contended that the Reference Court has committed serious error in not enhancing the amount of compensation in favour of claimants-appellants. For the enhancement of amount of compensation before the Reference Court and also this Court, the learned counsel for the appellants placed reliance on documents ex.24, 35 and 21. He has further placed reliance on yield method, on which the claimants-appellants also relied before the Reference Court for enhancement of compensation. It has next been contended that the deduction of 5% from the amount of compensation for new tenure to be paid to the Government is wholly unjustified and reliance in this respect has been placed on the decision of this Court in the case of Dy. General Manager v. Chaturji Lalaji & Ors., reported in 1998(1) GCD 339. Lastly, the learned counsel for the appellants contended that the Reference Court has fell in error in not awarding compensation for the severance of the land.

#. The learned counsel for the State of Gujarat

contending contrary, submitted that the learned Reference Court has not committed any error in not placing reliance on the sale instances. He further submitted that the reliance placed on the previous award of the Civil Court has also not rightly been accepted by the Reference Court. He laid much stress on the fact that the yield method which has been pressed into service for the purpose of getting enhancement of amount of compensation has also rightly been not relied by the Reference Court. So far as the claim for severence of the land is concerned, the learned counsel fro the State contended that this point was not pressed before the Civil Court and as such, it cannot be raised in the Appeal. Moreover, it is not the pure question of law but it is a question of fact and in the absence of any satisfactory factual foundation led for the same, it cannot be permitted to be raised in the Appeal also. However, so far as the challenge of the appellants to that part of the award of the Reference Court where 5% of the compensation was ordered to be deducted for new tenure and to be deposited with the Government, the learned counsel for the respondent-State is unable to support the same.

#. I have considered rival submissions made by the learned counsel for the parties and gone through the judgment of the Reference Court.

#. Ex.24 is dated 28th May 1974 and it is an agreement to sell of a piece of land admeasuring 70' x 80'. Similar is the case with ex.25 which is also an agreement to sell of a piece of land dated 1st December 1976 admeasuring 300'x48'. It has come on record of the Reference Court that these two piece of lands were agreed to be purchased by the purchaser for construction of the residential premises. Both these agreements to sell are of the year subsequent to the first Notification issued in this matter under section 4 of the Land Acquisition Act, 1894. It is not in dispute that these agreements to sell were never finalized as the sale-deeds have not been produced on the record. In view of the fact that these agreements to sell were not materialised at any point of time after their execution, these are agreements to sell of the lands where full consideration of land normally is not paid. Not only this, but these agreements to sell are post dated to the publication of Section 4 Notification. These relate to small piece of lands agreed to be purchased for residential premises and in one case the land is of Gamtal area. The learned reference Court has not committed any error in not placing reliance on these documents. Then comes the

document ex.21 the award of the Land Acquisition Officer. Under this alleged award for the acquisition of land for village Pingut, the Land Acquisition Officer felt contended to fix the market price at Rs.40/= per are. The learned Reference Court found as a fact that in this award, there is no reference of village Pingut. In view of this factual position, which has not been controverted by the learned counsel for the appellant, I fail to see how this document is of any help to the claimants-appellants. The learned counsel for the appellants has been permitted to go through the document ex.21 from the record of these appeals and after going through the document, he is unable to point out how this document is of any help to the claimants-appellants. So far as the other award, reference of which has been made in respect of lands of village Mauza, Reference Court has rightly not placed reliance thereon as the copy of that award has not been produced on the record and in absence of the same it is difficult to ascertain other relevant material for the purpose of deciding whether it is comparable award or not. The burden lies on the claimants-appellants to prove their case and if they want to rely on any award of the Land Acquisition Officer, alleging it to be a comparable award, they have to produce that award and in absence of this document, the Civil Court has not committed any error in case the orally cited cases were not accepted of the claimants-appellants.

#. Now I may revert to the next contention of the learned counsel for the appellants claiming enhancement of compensation relying on the yield method. The Reference Court has considered the evidence produced by the parties and has rightly not relied on this method. Thrust has been tried to be put on the oral evidence as if these lands are very fertile and have sufficient irrigation facilities In such matters it is not unknown to the Courts that the claimants are always projecting exaggerations, both for the yield as well as for showing amenities. From the judgment of the Reference Court, I find that the claimants have not produced any documentary evidence to show as to what amount they spent for laying pipeline to irrigate their lands. From the oral evidence which comes on the record they have stated of the possibility of taking of three crops, but no cogent or material evidence has been produced in support of these averments. Taking into consideration the totality of the facts of this case, I do not find any illegality in the award where reliance has not been placed on the yield method.

#. So far as the claim of compensation for severance of the lands is concerned, it is suffice to say that this point has not been pressed before the Reference Court. The learned counsel for the appellants, despite of repeatedly put by the Court, is unable to point out any reference of this contention before the Reference Court by the the claimants-appellants and further any finding recorded by the Reference Court. Faced with this situation, the learned counsel for the appellants contended that this point has been raised in the reference application and it was also pressed before the Reference Court but the Reference Court has not made reference of the same in the judgment and as such, it is not a case where the claimants-appellants can be blamed. Be that as it may, in case what the learned counsel for the appellants contended is true then proper course would have been and should have been to apply for review of the order before the authority or to file an affidavit of the arguing counsel in these Appeals to show that this point has been pressed during the course of arguments before the Reference Court but neither of these two things have been put into service by the claimants-appellants. In absence of any application for review of the order before the Reference Court as well as any affidavit of the arguing counsel before this Court in these Appeals, this contention raised by the learned counsel for the appellants cannot be accepted. I have gone through the memo of Appeals also and I do not find anything therein that any such contention has been raised by the claimants-appellants.

#. So far as the last contention of the learned counsel for the appellants against that part of the award of the Reference Court deducting 5% of the market value of the lands to be awarded to the claimants-appellants for new tenure lands to be paid to the Government is concerned, I am in agreement with this contention and the learned counsel for the appellants is correct to contend that in view of the Division Bench decision of this Court in the case of Dy. General Manager v. Chaturji Lalaji & Ors. (supra) such deduction could not have been ordered.

##. In the result, all these Appeals succeed in part. The order of the Reference Court to the extent where it orders for deduction of 5% of the market price of the lands to be paid as compensation for new tenure lands and to be paid to the Government is quashed and set aside. Rest of the award is maintained. To this extent only, the award of the Reference Court is modified. No order as to costs.

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(sunil)